

U.S. Application No. 10/613,689
Filed: July 3, 2003

Remarks

This Amendment is made in response to the Notice Requiring Excess Claim Fees mailed on February 21, 2006. The Notice indicated that the Amendment and Response to Office Action originally mailed on January 31, 2006, and processed in the Patent Office on January 31, 2006, has not been entered because all of the excess claim fees were not paid. In response, the instant Amendment is being submitted wherein Claims 17 and 18, which were previously "withdrawn," are now cancelled.

The following remarks, previously filed on January 31, 2006, are being resubmitted for the convenience of the Examiner.

Summary of the Amendments

Claims 1 – 18 were pending and under consideration; Claims 17 and 18 were pending, but withdrawn from consideration. Claims 1 – 18 have been cancelled. Claims 19 – 53 have been added.

Continued Examination Under 37 CFR 1.114

The examiner noted that the application is being examined under the continued examination provisions of 37 CFR 1.114.

Priority

The examiner noted that applicant's claim for priority is acknowledged but that applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 11. Applicant hereby acknowledges his obligation to satisfy the statutory and rule requirements for perfecting his priority claim.

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Drawings

The drawings were objected to for failing to show certain features claimed. Applicant has cancelled all claims previously under consideration for other reasons. Therefore, applicant believes that the basis for the objection has been obviated.

Claim Rejections – 35 U.S.C. § 112

Claims 9 – 11 were rejected under 35 U.S.C. 112, second paragraph. Applicant has cancelled all claims previously under consideration for other reasons. Therefore, applicant believes that the basis for rejection has been obviated.

Claim Rejections – 35 U.S.C. § 102

Claims 1 - 8 and 10 – 12 were rejected under 35 U.S.C. 102(b) as anticipated by Greenwell et al (#5,862,648). Claims 1 – 8 and 10 – 12 have been cancelled and replaced by claims that are believed to more clearly distinguish applicant's invention over the prior art cited.

Claims 1 – 5, 7 – 8, and 10 – 12 were rejected under 35 U.S.C. 102(b) as being anticipated by Ganz (US 3,190,048). Claims 1 – 5, 7 – 8 and 10 – 12 have been cancelled and replaced by claims that are believed to more clearly distinguish applicant's invention over the prior art cited.

Claims 1 – 4, 9 – 10 were rejected under 35 U.S.C. 102(b) as being anticipated by Page et al. (US 5,813, 196). Claims 1 – 4, 9 - 10 have been cancelled and replaced by claims that are believed to more clearly distinguish applicant's invention over the prior art cited.

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Claim Rejections – 35 U.S.C. § 103

Claims 13 – 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwell et al (#5,862,648) in view of Applicant's Admitted prior art (AAPA). The examiner stated that "[t]he common knowledge modification taken in the previous rejection of 9/30/04 was not timely traversed by applicant." Claims 13 – 16 have been cancelled and replaced by claims that are believed to more clearly distinguish applicant's invention over the prior art cited. However, applicant notes that he traversed the rejection of claim 13 whether under 35 U.S.C. 102(b) or 35 U.S.C. 103 (a) in his response to the office action of 09/30/2004. Applicant further notes that the indication of official notice is ambiguous in that it appears at the end of a paragraph that begins by rejecting claims 1-16 under 35 U.S.C. 102(b) or in the alternative under 35 U.S.C. 103 (a). The office action does not indicate to which basis for rejection the citation of "official notice" is applicable. In addition, in the office action of 06/14/2005, the examiner indicates that "[t]he 103 rejection was not set forth." However, examiner then states that "[a] 103 rejection was based upon claim 13" Applicant also re-states his assertion that claim 13 did not contain a limitation "control means." Lastly, applicant notes that, in addition to the ambiguities noted above, the guidance provided by the Manual of Patent Examining Procedure and case law indicates that attempted use of "official notice" is not properly applied in this instance. MPEP § 2144.03 (E) reads as follows:

Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied. Furthermore, as noted by the court in *Ahleret*, any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the examiner to

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support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based. See *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697; *Ahlert*, 424 F.2d at 1092, 165 USPQ 421.

In this instance, no evidentiary support was provided in the record.

Conclusion

Applicant believes that the new claims have obviated examiner's previous bases for rejection and distinguish applicant's invention over the prior art. Therefore, applicant respectfully requests approval and acceptance of the new claims and that the case be passed to issuance.

The Commissioner is requested to charge the excess claim fees in connection with this submission in accordance with the Form PTO-2038 originally submitted January 31, 2006. With the cancellation of claims 17 and 18, no additional fees are believed to be due at this time. If, however, a fee is due, the Commissioner is requested to charge such fee, or credit any overpayment to Deposit Account No. 50-3447.

Respectfully submitted,

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